IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

MACA.No. 54 of 2007

OPMV.1226/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM

APPELLANT/3RD RESPONDENT

THE NATIONAL INSURANCE COMPANY LTD.,
CHERUPUSHPAM BUILDING, P.B.NO.47,
MAIN ROAD, PALA POST, KOTTAYAM.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: CLAIMANT AND R1 & R2
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1. K.N.VIJAYAKUMAR, S/O. G.NARAYANAN,
KOZHIKKATTIL HOUSE, PADUVA POST,
AKALAKUNNAM VILLAGE, KOTTAYAM.

2. TOMY JOSEPH, S/O. MATHAI VARKEY,
KANNANTHARAPPIL HOUSE, MARANGATTUPALLY POST,
KOTTAYAM.

3. VINOD @ UNNI, S/O. BHASKARAN,
KARIMBILAKAL HOUSE, MATTAKKARA POST,
AKALAKUNNAM VILLAGE, KOTTAYAM.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 05/02/2007 PASSED THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M. Ramachandran & S. Siri Jagan, JJ.

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M.A.C.A. No. 54 of 2007

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Dated this, the 5th February, 2007.

J U D G M E N T

Siri Jagan, J.

The insurer in a motor accident claim is the appellant herein. 1st respondent is the claimant, 2nd respondent the owner of the vehicle and the 3rd respondent is the driver. The 1st respondent suffered injuries and consequent disability for which a total compensation of Rs. 54,500/- has been awarded by the M.A.C.T., Kottayam in O.P(MV) No. 1226/2000. The appellant-Insurance Company, in its written statement, raised a contention that the Insurance Company is not liable since there was violation of policy conditions. However, the learned Tribunal found that there was no serious efforts whatsoever on the part of the appellant-Insurance Company to adduce evidence in support of their contention regarding violation of policy conditions and therefore found that the appellant is liable to pay the compensation. The Insurance Company is challenging the said award in respect of the finding regarding its liability as well as the quantum awarded on the strength of the petition under Section 170 of the Motor Vehicles Act which was allowed by the Tribunal.

2. We have heard learned counsel for the appellant-insurer.

3. Before the Tribunal, the owner and driver were ex parte. The appellant did not even produce the copy of the insurance policy although they had admitted the policy. They did not also adduce any oral or documentary evidence in support of their contentions. Although on the strength of the FIR and charge sheet in Crime No. 42/2001 of Manarcadu Police Station, which was registered on the basis of the accident which was the subject matter of the O.P(MV), the appellant would contend that the driver did not have a valid licence and a charge was included for driving the vehicle without a valid licence.

4. We are not satisfied that the Tribunal could have arrived at a positive conclusion regarding the absence of a valid driving licence for the driver on the basis of those documents alone. The least the Insurance Company could have done is to examine the police officers to prove the same. In the absence of any convincing evidence to show that the driver was actually convicted for an offence involving driving of the motor vehicle without any valid licence, we are not inclined to accept the contention of the appellant that the appellant ought to have been absolved from liability on account of the violation of policy conditions by the insured.

5. The appellant also contests the quantum of compensation awarded by the Tribunal. From the award, it is seen that as per the medical evidence produced, the claimant had open fracture of both the bones of left leg. He was treated in the Medical College Hospital for about one month. The Professor of Orthopedics of the Medical College had assessed 10% disability on account of the injury suffered by the claimant. The Tribunal had taken only Rs.1500/- as the monthly income of the claimant and based on the age of the claimant, namely, 23 years, a moderate multiplier of 15 was taken. The total compensation awarded towards permanent disability was only Rs. 27,000/-. For pain and suffering, Rs. 15,000/- was awarded. For treatment expenses, an amount of Rs. 2,500/- was granted to the claimant and for the expenses of bi-stander, Rs. 1,500/- was granted. For transportation, an amount of Rs. 1,000/- was also awarded. A mere look at the above computation of compensation would conclusively show that the amount awarded was not at all excessive, considering the nature of the injuries sustained by the claimant and the consequent disability.

In the above circumstances, we do not find any merit in the

appeal and accordingly, the same is dismissed, but, without any order as to costs.

Sd/- M. Ramachandran, Judge.

Sd/- S. Siri Jagan, Judge.

Tds/

[True copy]

P.S to Judge.